

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF NORTH CAROLINA  
WESTERN DIVISION

NO. 5:09-CR-216-2-FL  
NO. 5:09-CR-216-5-FL  
NO. 5:09-CR-216-8-FL

UNITED STATES OF AMERICA	)	
	)	GOVERNMENT'S RESPONSE TO
v.	)	DEFENDANTS' MOTIONS TO
	)	SEQUESTER WITNESSES
HYSEN SHERIFI	)	(D.E. 1037, 1052, 1045)
DYLAN BOYD, a/k/a	)	
"Mohammed,"	)	
ZIYAD YAGHI	)	

The United States of America, by and through the United States Attorney for the Eastern District of North Carolina, hereby responds to defendants' Motions to Sequester Witnesses, and states unto the Court:

Defendant Hysen Sherifi moves the Court to sequester witnesses pursuant to Fed. R. Evid. 615. D.E. 1037. Additionally, defendants Ziyad Yaghi and Dylan Boyd specifically and only requests that *government* witnesses be sequestered, and Dylan Boyd further requests an extension of Rule 615 such that the prosecutor be prohibited from revealing anything about any trial testimony to later government witnesses. D.E. 1052 and 1045. The government opposes the motion in part, to the extent that any sequestration order would be made unilaterally against the government.

Interestingly, in support of the requested extension of Rule 615 to include even the prosecutor, defendant Dylan Boyd cites Untied States v. Greshner, 802 F.2d 373 (10<sup>th</sup> Cir. 1986). The

Fourth Circuit relied on Greshner in a decision vacated after an en banc hearing. United States v. Rhynes, 196 F.3d 207 (4<sup>th</sup> Cir. 1999), vac'd by United States v. Rhynes, 218 F.3d 310 (4<sup>th</sup> Cir. 2000). In its later ruling, the Fourth Circuit noted that "the relevant authorities interpreting Rule 615, including court decisions and the leading commentators, agree that sequestration orders prohibiting discussions between witnesses should, and do, permit witnesses to discuss the case with counsel for either party. . ." Id. at 317. In addition to noting that such sequestration order might interfere with a defendant's constitutional right to counsel, the Rhynes court reasoned that to all clients, attorneys owe competence. Id. at 318. "To fulfill this basic duty, the attorney must prepare for the task at hand." Id. "Thorough preparation demands that an attorney interview and prepare witnesses before they testify." Id. at 319.

To this end, the government seeks only that all parties and counsel be treated equally<sup>1</sup>. Without waiving the requested exceptions in its own motion to sequester, if the Court orders sequestration it should not be so restrictive as to interfere with the ability to prepare upcoming witnesses. Any restrictions should apply equally to the defendants.

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<sup>1</sup>Defendant Sherifi requested the extended sequestration order to include application to counsel, but, citing Rhynes, requested the extension applicable to prosecution and defense.

Respectfully submitted this 20th day of June, 2011.

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CERTIFICATE OF SERVICE

This is to certify that I have this 20th day of June, 2011, served a copy of the foregoing upon counsel for the defendants in this action by electronically filing the foregoing with the Clerk of Court, using the CM/ECF:

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and further, upon defendant Anes Subasic by placing a copy postage pre-paid in first class mail addressed to: Anes Subasic, Public Safety Center, Attn: Wake County Jail, Post Office 2419, Raleigh, NC 27602.

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